

AMENDED IN SENATE APRIL 6, 2010

SENATE BILL

No. 1329

Introduced by Senator Leno
(Coauthor: Senator Romero)

February 19, 2010

An act to amend Sections 1569.33 and 1569.682 of, and to add Section 1569.686 to, the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

SB 1329, as amended, Leno. Residential care facilities for the elderly.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services. Under existing law, a violation of these provisions is a crime.

Existing law requires the department to conduct an annual unannounced visit of a facility under specified circumstances.

This bill would require the licensee of a facility to notify the department in writing within 24 hours of specified events or obtaining knowledge of these events, and would require the department to conduct an annual unannounced visit to the facility when the facility experiences any of these events.

This bill would require the licensee of a facility to notify all residents and, if applicable, their legal representatives, as well as applicants and potential residents, of specified events.

Existing law requires a licensee of a facility, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of forfeiture of a license, or change of use of the facility pursuant to the department's regulations, to take reasonable

steps to transfer affected residents safely and to minimize possible trauma, as specified.

This bill would make the above-described reasonable steps requirement applicable to an immediate successor in interest to property that includes a residential care facility for the elderly.

By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 RCFE Residents Foreclosure Protection Act of 2010.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) There are currently approximately 8,000 residential care
- 5 facilities for the elderly (RCFEs) in California.
- 6 (b) The vast majority of RCFEs are located in single-family
- 7 dwellings, with a mortgage on the property.
- 8 (c) The best interests of the residents of RCFEs requires
- 9 procedures to ensure that they are notified and protected whenever
- 10 their home is subject to a foreclosure or other event indicating
- 11 significant financial distress.
- 12 (d) Therefore, it is the intent of the Legislature in enacting this
- 13 act to establish procedures to protect RCFE residents by providing
- 14 them and the state with information when an RCFE is suffering
- 15 foreclosure proceedings or experiencing financial distress.
- 16 SEC. 3. Section 1569.33 of the Health and Safety Code is
- 17 amended to read:
- 18 1569.33. (a) Every licensed residential care facility for the
- 19 elderly shall be subject to unannounced visits by the department.
- 20 The department shall visit these facilities as often as necessary to
- 21 ensure the quality of care provided.
- 22 (b) The department shall conduct an annual unannounced visit
- 23 of a facility under any of the following circumstances:

1 (1) When a license is on probation.

2 (2) When the terms of agreement in a facility compliance plan
3 require an annual evaluation.

4 (3) When an accusation against a licensee is pending.

5 (4) When a facility requires an annual visit as a condition of
6 receiving federal financial participation.

7 (5) In order to verify that a person who has been ordered out of
8 the facility for the elderly by the department is no longer at the
9 facility.

10 (6) When a facility experiences any of the events described in
11 subdivision (c) of Section 1569.686.

12 (c) (1) The department shall conduct annual unannounced visits
13 to no less than 20 percent of facilities not subject to an evaluation
14 under subdivision (b). These unannounced visits shall be conducted
15 based on a random sampling methodology developed by the
16 department.

17 (2) If the total citations issued by the department exceed the
18 previous year's total by 10 percent, the following year the
19 department shall increase the random sample by 10 percent of the
20 facilities not subject to an evaluation under subdivision (b). The
21 department may request additional resources to increase the random
22 sample by 10 percent.

23 (d) Under no circumstance shall the department visit a residential
24 care facility for the elderly less often than once every five years.

25 (e) The department shall notify the residential care facility for
26 the elderly in writing of all deficiencies in its compliance with the
27 provisions of this chapter and the rules and regulations adopted
28 pursuant to this chapter, and shall set a reasonable length of time
29 for compliance by the facility.

30 (f) Reports on the results of each inspection, evaluation, or
31 consultation shall be kept on file in the department, and all
32 inspection reports, consultation reports, lists of deficiencies, and
33 plans of correction shall be open to public inspection.

34 (g) As a part of the department's evaluation process, the
35 department shall review the plan of operation, training logs, and
36 marketing materials of any residential care facility for the elderly
37 that advertises or promotes special care, special programming, or
38 a special environment for persons with dementia to monitor
39 compliance with Sections 1569.626 and 1569.627.

SEC. 4. Section 1569.682 of the Health and Safety Code is amended to read:

1569.682. (a) A licensee of a licensed residential care facility for the elderly or an immediate successor in interest to property on which a residential care facility for the elderly is located, shall, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as described in subdivision (a), (b), or (f) of Section 1569.19 or change of use of the facility pursuant to the department's regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

(1) Prepare, for each resident, a relocation evaluation of the needs of that resident, which shall include both of the following:

(A) Recommendations on the type of facility that would meet the needs of the resident based on the current service plan.

(B) A list of facilities, within a 60-mile radius of the resident's current facility, that meet the resident's present needs.

(2) Provide each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction. The notice shall include all of the following:

(A) The reason for the eviction, with specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reasons.

(B) A copy of the resident's current service plan.

(C) The relocation evaluation.

(D) A list of referral agencies.

(E) The right of the resident or resident's legal representative to contact the department to investigate the reasons given for the eviction pursuant to Section 1569.35.

(3) Discuss the relocation evaluation with the resident and his or her legal representative within 30 days of issuing the notice of eviction.

(4) Submit a written report of any eviction to the licensing agency within five days.

(5) Upon issuing the written notice of eviction, a licensee shall not accept new residents or enter into new admission agreements.

(6) (A) For paid preadmission fees in excess of five hundred dollars (\$500), the resident is entitled to a refund in accordance with all of the following:

1 (i) A 100-percent refund if preadmission fees were paid within
2 six months of notice of eviction.

3 (ii) A 75-percent refund if preadmission fees were paid more
4 than six months but not more than 12 months before notice of
5 eviction.

6 (iii) A 50-percent refund if preadmission fees were paid more
7 than 12 months but not more than 18 months before notice of
8 eviction.

9 (iv) A 25-percent refund if preadmission fees were paid more
10 than 18 months but less than 25 months before notice of eviction.

11 (B) No preadmission refund is required if preadmission fees
12 were paid 25 months or more before the notice of eviction.

13 (C) The preadmission refund required by this paragraph shall
14 be paid within 15 days of issuing the eviction notice. In lieu of the
15 refund, the resident may request that the licensee provide a credit
16 toward the resident's monthly fee obligation in an amount equal
17 to the preadmission fee refund due.

18 (7) If the resident gives notice five days before leaving the
19 facility, the licensee shall refund to the resident or his or her legal
20 representative a proportional per diem amount of any prepaid
21 monthly fees at the time the resident leaves the facility and the
22 unit is vacated. Otherwise the licensee shall pay the refund within
23 seven days from the date that the resident leaves the facility and
24 the unit is vacated.

25 (8) Within 10 days of all residents having left the facility, the
26 licensee, based on information provided by the resident or
27 resident's legal representative, shall submit a final list of names
28 and new locations of all residents to the department and the local
29 ombudsperson program.

30 (b) If seven or more residents of a residential care facility for
31 the elderly will be transferred as a result of the forfeiture of a
32 license or change in the use of the facility pursuant to subdivision
33 (a), the licensee shall submit a proposed closure plan to the
34 department for approval. The department shall approve or
35 disapprove the closure plan, and monitor its implementation, in
36 accordance with the following requirements:

37 (1) Upon submission of the closure plan, the licensee shall be
38 prohibited from accepting new residents and entering into new
39 admission agreements for new residents.

1 (2) The closure plan shall meet the requirements described in
2 subdivision (a), and describe the staff available to assist in the
3 transfers. The department's review shall include a determination
4 as to whether the licensee's closure plan contains a relocation
5 evaluation for each resident.

6 (3) Within 15 working days of receipt, the department shall
7 approve or disapprove the closure plan prepared pursuant to this
8 subdivision, and, if the department approves the plan, it shall
9 become effective upon the date the department grants its written
10 approval of the plan.

11 (4) If the department disapproves a closure plan, the licensee
12 may resubmit an amended plan, which the department shall
13 promptly either approve or disapprove, within 10 working days
14 of receipt by the department of the amended plan. If the department
15 fails to approve a closure plan, it shall inform the licensee, in
16 writing, of the reasons for the disapproval of the plan.

17 (5) If the department fails to take action within 20 working days
18 of receipt of either the original or the amended closure plan, the
19 plan, or amended plan, as the case may be, shall be deemed
20 approved.

21 (6) Until the time that the department has approved a licensee's
22 closure plan, the facility shall not issue a notice of transfer or
23 require any resident to transfer.

24 (7) Upon approval by the department, the licensee shall send a
25 copy of the closure plan to the local ombudsperson program.

26 (c) (1) If a licensee fails to comply with the requirements of
27 subdivision (a), and if the director determines that it is necessary
28 to protect the residents of a facility from physical or mental abuse,
29 abandonment, or any other substantial threat to health or safety,
30 the department shall take any necessary action to minimize trauma
31 for the residents. The department shall contact any local agency
32 that may have placement or advocacy responsibility for the
33 residents, and shall work with those agencies to locate alternative
34 placement sites, contact relatives or other persons responsible for
35 the care of these residents, provide onsite evaluation of the
36 residents, and assist in the transfer of residents.

37 (2) The participation of the department and local agencies in
38 the relocation of residents from a residential care facility for the
39 elderly shall not relieve the licensee of any responsibility under
40 this section. A licensee that fails to comply with the requirements

1 of this section shall be required to reimburse the department and
2 local agencies for the cost of providing the relocation services. If
3 the licensee fails to provide the relocation services required in
4 subdivisions (a) and (b), then the department may request that the
5 Attorney General's office, the city attorney's office, or the local
6 district attorney's office seek injunctive relief and damages in the
7 same manner as provided for in Chapter 5 (commencing with
8 Section 17200) of Part 2 of Division 7 of the Business and
9 Professions Code.

10 (d) A licensee who fails to comply with requirements of this
11 section shall be liable for the imposition of civil penalties in the
12 amount of one hundred dollars (\$100) per violation per day for
13 each day that the licensee is in violation of this section, until such
14 time that the violation has been corrected. The civil penalties shall
15 be issued immediately following the written notice of violation.
16 However, if the violation does not present an immediate or
17 substantial threat to the health or safety of residents and the licensee
18 corrects the violation within three days after receiving the notice
19 of violation, the licensee shall not be liable for payment of any
20 civil penalties pursuant to this subdivision related to the corrected
21 violation.

22 (e) A resident of a residential care facility for the elderly covered
23 under this section, may bring a civil action against any person,
24 firm, partnership, or corporation who owns, operates, establishes,
25 manages, conducts, or maintains a residential care facility for the
26 elderly who violates the rights of a resident, as set forth in this
27 section. Any person, firm, partnership, corporation, or immediate
28 successor in interest to property on which a residential care facility
29 for the elderly is located, who owns, operates, establishes, manages,
30 conducts, maintains, or takes a residential care facility for the
31 elderly who violates this section shall be responsible for the acts
32 of the facility's employees and shall be liable for costs and attorney
33 fees. This residential care facility for the elderly may also be
34 enjoined from permitting the violation to continue. The remedies
35 specified in this section shall be in addition to any other remedy
36 provided by law.

37 (f) This section does not apply to a licensee that has obtained a
38 certificate of authority to offer continuing care contracts, as defined
39 in paragraph (8) of subdivision (c) of Section 1771.

SEC. 5. Section 1569.686 is added to the Health and Safety Code, to read:

1569.686. (a) Within 24 hours of any event, or obtaining knowledge of any event, described in subdivision (b), the licensee of a residential care facility for the elderly shall notify the department in writing of the event. This notification may be provided by telephone facsimile, overnight mail, or by telephone with a written confirmation within five calendar days after the telephone call.

(b) Any of the following events requires notification pursuant to this section:

(1) Failure to make one or more mortgage payments on the property.

(2) Failure to make timely payment of any premiums required to maintain mandated insurance policies or bonds in effect, or any tax lien levied by any government agency.

(3) A utility company has sent notice of intent to terminate a utility on the property.

(4) A judgment lien has been levied against the facility or any of the assets of the facility or licensee.

(5) A financial institution refuses to honor a check or other instrument issued by the licensee to its employees for a regular payroll.

(6) The financial resources of the licensee fall below the amount needed to operate the facility for a period of at least 45 days based on the current occupancy of the facility.

(7) A notice of foreclosure is issued on the property.

(8) An unlawful detainer action is initiated against the licensee.

(9) The licensee files for bankruptcy.

(c) A licensee shall notify all residents and, if applicable, their legal representatives, within 24 hours of any of the following events, or knowledge of the event:

(1) A notice of foreclosure is issued on the property.

(2) An unlawful detainer action is initiated against the licensee.

(3) The licensee files for bankruptcy.

(d) A licensee shall notify applicants and potential residents, prior to admission, of any of the following events, or knowledge of the event:

(1) A notice of foreclosure is issued on the property.

(2) An unlawful detainer action is initiated against the licensee.

1 (3) The licensee files for bankruptcy.

2 (e) A licensee who fails to comply with this section shall be
3 liable for civil penalties in the amount of one hundred dollars
4 (\$100) for each day of the failure to provide notification required
5 ~~in this section. If the failure to notify has compromised the health~~
6 ~~or safety of a resident or led to the relocation of any residents, the~~
7 *in this section. If residents are relocated without the adequate*
8 *notification required by this section, or if the health or safety of a*
9 *resident has been compromised as a result of a relocation that has*
10 *occurred without adequate notification, the* department may also
11 suspend or revoke the licensee's license and issue a permanent
12 revocation of the licensee's ability to operate a facility anywhere
13 in the state.

14 (f) For purposes of this section, "property" means the land or
15 building in which a residential care facility for the elderly is
16 located.

17 SEC. 6. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.